

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CRAIG DION GREEN,

Petitioner,

Case No. 1:12-cv-944

v.

Honorable Paul L. Maloney

CARMEN D. PALMER,

Respondent.

**ORDER REGARDING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL
AND DENYING CERTIFICATE OF APPEALABILITY**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On September 20, 2012, the Magistrate Judge entered a report and recommendation to dismiss the petition because it is barred by the one-year statute of limitations. Petitioner filed a notice of appeal and motion for a certificate of appealability (docket #10) on October 1, followed by objections to the report and recommendation on October 3.

Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. The docketing fee for a case on appeal is \$450.00. *See* 28 U.S.C. § 1913; Court of Appeals Miscellaneous Fee Schedule §§ 1, 11 (Nov. 1, 2011). In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has failed to pay the required fees.

Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal unless this court certifies that his appeal is not taken in good faith. Good faith is judged objectively, and an appeal is taken in good faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961). Detailed reasons for dismissal of the petition

were provided in the report and recommendation (docket #5), which was adopted by this Court. The Court reaffirms its decision and finds that the issues on which Petitioner might seek review are frivolous. The Court, therefore, certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within 28 days of this order. *See* 28 U.S.C. §§ 1913, 1917; Court of Appeals Miscellaneous Fee Schedule §§ 1, 11 (Nov. 1, 2011). Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

With regard to Petitioner's motion for a certificate of appealability, the Court entered an order and judgment on October 12, 2012, adopting the report and recommendation, dismissing the petition and denying a certificate of appealability. Because the Court has denied Petitioner a motion for certificate of appealability, his motion will be denied as moot. Accordingly:

IT IS ORDERED that Petitioner is DENIED leave to proceed *in forma pauperis* on appeal. The Court certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within 28 days of this order. *See* 28 U.S.C. §§ 1913, 1917; Court of Appeals Miscellaneous Fee Schedule §§ 1, 11 (Nov. 1, 2011). Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

IT IS FURTHER ORDERED that Petitioner's motion for certificate of appealability (docket # 10) is DENIED.

Dated: November 1, 2012

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge